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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

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Implementation of Sections 309(j) and  
337 of the Communications Act of 1934  
as amended

)  
) WT Docket No. 99-87  
)  
)

Promotion of Spectrum Efficient  
Technologies on Certain Part 90  
Frequencies

) RM-9332  
)  
)

Establishment of Public Service Radio  
Pool in the Private Mobile  
Frequencies Below 800 MHz

) RM-9405  
)  
)

Petition for Rule Making of the American  
Mobile Telecommunications Association

) RM-9705  
)

To: Federal Communications Commission

**COMMENTS OF NEXTEL COMMUNICATIONS, INC.**

Nextel Communications, Inc., ("Nextel") respectfully submits these Comments in the above-captioned proceeding. The Federal Communications Commission ("Commission") seeks comment on a proposed modification to the Commission's rules which would permit assignment or conversion of existing 900 MHz Business and Industrial/Land Transportation ("B/ILT") channels for use in commercial Specialized Mobile Radio ("SMR") systems, consistent with the rule change recently adopted for the 800 MHz band.<sup>1</sup> The

<sup>1</sup> In the Matter of Implementation of Section 309(j) and 337 of the Communications Act of 1934 as Amended, *Report and Order and Further Notice of Proposed Rulemaking*, \_\_\_ FCC Rcd \_\_\_, WT Docket No. 99-87, FCC 00-403 (November 9, 2000) (the "*B/ILT Order*" or the "*B/ILT FNPRM*").

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proposed rule change will create additional flexibility for both B/ILT licensees seeking to fulfill their communications needs and for commercial licensees seeking to acquire additional spectrum. Accordingly, Nextel supports the proposed amendment to the Commission's rules.

## **I. BACKGROUND**

Pursuant to the Balanced Budget Act of 1997<sup>2</sup>, the Commission initiated the above-captioned proceeding to consider a variety of changes to the Commission's rules and policies to implement its revised auction authority. Among the many issues in the proceeding, the Commission considered whether 800 MHz B/ILT licensees should be given the flexibility to convert or assign their existing spectrum to Commercial Mobile Radio Service ("CMRS") use.

In its November 9, 2000 *B/ILT Order*, the Commission amended its rules to permit B/ILT licensees to assign their spectrum to CMRS licensees for use in CMRS operations or to enter into joint ventures or other arrangements with commercial providers to offer commercial service.<sup>3</sup> The Commission found that permitting such transactions would create additional flexibility for both B/ILT licensees seeking to fill their communications needs and for CMRS licensees seeking additional spectrum.<sup>4</sup> The rule change also permits B/ILT

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<sup>2</sup> Pub. L. No. 105-33, Title III, 111 Stat. 251 (1997).

<sup>3</sup> *B/ILT Order* at paras. 109-110.

<sup>4</sup> *Id.* at para. 109.

licensees flexibility to modify their licenses to allow CMRS use in their own systems, allowing them the opportunity to assess marketplace and economic factors when determining the best and most efficient use of spectrum.<sup>5</sup>

During the course of the 800 MHz B/ILT proceeding, commenters suggested that this same flexibility should be extended to 900 MHz B/ILT licensees because that spectrum is similarly “interleaved” with CMRS spectrum and because there is no public interest reason to preclude such flexibility in the 900 MHz band as well.<sup>6</sup> Despite strong evidence in the record supporting such action, the Commission declined to adopt a similar rule change for the 900 MHz band until it could solicit further comment. Accordingly, it concurrently adopted the instant *B/ILT FNPRM* seeking comment on whether flexible use of B/ILT spectrum should be extended to the 900 MHz band.

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<sup>5</sup> *Id.* at para. 111.

<sup>6</sup> See Nextel Comments in WT Docket 99-87 at page 15 (the Commission “must ensure free alienability of incumbent [800 and 900 MHz B/ILT] licenses”); Saia Comments at page 6 (“Saia expects that the Commission will receive numerous comments responsive to the [Nextel] Requests that seek similar relief for 900 MHz SMR licensees. Saia supports those requests . . . [T]he Commission has plainly abandoned the balkanized approach to spectrum allocation . . . [T]he Commission should permit voluntary transactions in both bands that permits the spectrum to be conveyed to the entity that values it most highly. Therefore, the Policy should be waived in the same manner for 900 MHz SMR licensees.”); AMTA Comments at page 6 (“All qualified parties are entitled to pursue voluntary, market-driven arrangements . . . AMTA believes that similar policy considerations support a more flexible regulatory framework at 900 MHz.”); AMTA *ex parte* filing of October 31, 2000 (“AMTA urged the Commission to adopt rules that would permit private and commercial licensees in both the 800 MHz and 900 MHz bands to enter into consensual arrangements that reflect the parties’ determinations as to the optimal use of the spectrum in which they currently operate.”); PCIA Comments; and North Texas Communications Council.

## **II. THE COMMISSION SHOULD PERMIT FLEXIBILITY FOR COMMERCIAL B/ILT SPECTRUM USE IN THE 900 MHZ BAND**

Given the Commission's recent findings regarding flexibility in the 800 MHz band, Nextel agrees with the Commission's conclusion that "the statutory objective of regulatory symmetry among CMRS providers"<sup>7</sup> mandates 900 MHz B/ILT licensees receive the same flexibility that the Commission has adopted for 800 MHz B/ILT licensees to engage in commercial operations or to sell their licenses to commercial providers for commercial use.

In the 800 MHz band, the Commission found that alienability of B/ILT licenses would enhance spectral use, efficiency and technological developments.<sup>8</sup> These same benefits will result with increased flexibility in the 900 MHz band. With increased flexibility, 900 MHz B/ILT licensees can better assess market conditions and can promote the most efficient spectrum use. Some licensees may choose to continue to use their B/ILT spectrum for internal private communications; other may choose to offer commercial services on their spectrum – increasing its usage, increasing commercial competition and increasing spectral efficiency; while others may choose to assign their spectrum to commercial providers who may value the spectrum more highly than the incumbent. With increased flexibility, licensees will have the ability to undertake voluntary transactions that are in their economic best

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<sup>7</sup> *B/ILT NPRM* at para. 144.

<sup>8</sup> *BILT Order* at paras. 110–111.

interests and not be subject to the regulatory restrictions adopted during this spectrum's initial allocation over fifteen years ago.

Similar to the circumstances in the 800 MHz band, 900 MHz B/ILT spectrum is already licensed to incumbents in most major markets; therefore, allowing voluntary transactions to occur will not reduce the available supply of B/ILT spectrum.<sup>9</sup> Similarly, 900 B/ILT spectrum is interleaved with commercial 900 MHz spectrum – making it particularly useful to neighboring 900 MHz commercial operators seeking additional spectrum capacity in particular markets.<sup>10</sup>

Finally, the Commission's recent activities in other spectrum-related proceedings, supports increased flexibility for B/ILT licensees at 900 MHz. For example, in the pending Secondary Markets proceeding,<sup>11</sup> commenters overwhelmingly support increased permissibility of spectrum leases, which will

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<sup>9</sup> As the Commission recognizes, licensees do not typically return their frequencies to the B/ILT pool so as to be available for licensing to other private users. *See B/ILT Order* at para. 112.

<sup>10</sup> The Commission stated that the interleaved nature of the 800 MHz band was particularly important: "We note that the 800 MHz band is particularly suited to such flexibility because 800 MHz PLMR and CMRS channels are interleaved, rather than grouped into separate bands." *B/ILT Order* at para. 109. Unlike the 800 MHz band, however, there is no public safety allocation in the 900 MHz band; therefore, there is no need for the Commission to adopt public safety notification requirements upon conversion of 900 MHz B/ILT spectrum to commercial use, as it adopted at 800 MHz.

<sup>11</sup> In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, *Notice of Proposed Rulemaking*, \_\_\_ FCC Rcd \_\_\_, WT Docket 00-230, FCC 00-402 (released November 27, 2000).

potentially allow existing licensees to parcel out portions or all of their spectrum to users who value the spectrum more highly. The proposed flexibility herein gives existing licensees additional options and will thereby promote economic secondary market transactions and more efficient use of the 900 MHz B/ILT spectrum.


### **III. CONCLUSION**

The proposed rule change would make the 900 MHz rules consistent with rule changes recently adopted in the 800 MHz band. Given similar circumstances and the likelihood of similar benefits for both incumbents and commercial providers, Nextel urges that the Commission expeditiously adopt the proposed modifications and permit voluntary assignments between

incumbent B/ILT licensees and commercial providers and the voluntary conversion of B/ILT licenses to commercial use.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

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Dated: March 5, 2001

CERTIFICATE OF SERVICE

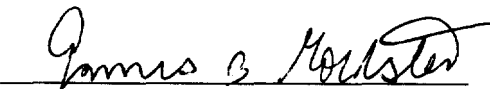
I, James B. Goldstein, hereby certify that on this March 5, 2001, caused a copy of the attached Comments of Nextel Communications, Inc. to be served by hand delivery to the following:

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